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Attorneys for Defendant
Google Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., Associational
Plaintiff, BETTY MILES, JOSEPH
GOULDEN, and JIM BOUTON, on behalf of
themselves and all other similarly situated,

Plaintiffs,

v.

GOOGLE INC.,

Defendant.

Civil Action No. 05 CV 8136 (DC)

ECF Case

**DECLARATION OF JOSEPH C. GRATZ
IN SUPPORT OF GOOGLE INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Joseph C. Gratz, declare as follows:

1. I am a member of the law firm Durie Tangri LLP, counsel for Google Inc. in this matter. I make the following declaration based on my personal knowledge and, if called upon to do so, could testify competently to the matters set forth herein

2. Attached hereto as Exhibit 1 is a true and correct copy of a screen shot for a Google Books snippet view page for Jim Bouton, *Ball Four* (J. Wiley & Sons ed. 1990), at <http://books.google.com/books?id=3cgcAQAAIAAJ&q=lawsuit>.

3. The three named plaintiffs produced some publishing contracts for their books in discovery, but more than half are lost. Plaintiff Jim Bouton testified that he lost the publishing contracts for three of the five editions of *Ball Four*. *Id.* at 54:1-24. In addition to the two contracts with respect to *Ball Four*, Mr. Bouton produced the publishing contract for one edition of *Foul Ball*. The three contracts Mr. Bouton was able to locate are attached to this declaration as Exhibit 7. In addition to *Ball Four* and *Foul Ball*, Mr. Bouton authored or co-authored *I'm Glad You Didn't Take It Personally*, *I Managed Good* and *Strike Zone*. He testified that he does not have the publishing contracts for any of these books. Bouton Dep., attached to this declaration as Exhibit 2 at 69:14-70:11, 71:10-19, 74:6-12. Mr. Bouton produced only one piece of reversion correspondence—a reversion acknowledgement letter with respect to *Foul Ball*. He did not produce reversion correspondence with respect to any of this other books.

4. Plaintiff Goulden produced a list of his seventeen published books. Goulden Dep. Ex. 2, attached to this declaration as Exhibit 4. Mr. Goulden produced only one publishing contract (for *The Dictionary of Espionage: Spookspeak Into English*) and two translation agreements. Mr. Goulden's publishing contracts are attached to this declaration as Exhibit 8. Mr. Goulden testified that he was not able to locate publishing contracts for any of his other

books. Goulden Dep., Gratz Decl. Ex. 3, at 60:12-61:8. Thus, out of seventeen publishing contracts, Mr. Goulden has only three.

5. Plaintiff Betty Miles produced a list of her out of print and uncertain status books (Miles Dep. Ex. 9, attached to this declaration as Exhibit 6) of which there are twenty-three. She identified another five books at deposition for a total of twenty-eight books. Miles Dep., Gratz Decl. Ex. 5, at 55:18-57:14. Ms. Miles produced publishing contracts (or amendments to publishing contracts) for twelve out of her twenty-eight books. (Miles' contracts are attached to this declaration as Exhibit 9.)

6. In sum, the named plaintiffs have authored a combined total of fifty-three books and have been able to locate only eighteen publishing contracts.

7. Attached hereto as Exhibit 2 are true and correct copies of excerpts taken from the December 15, 2011 Deposition of Jim Bouton in this action.

8. Attached hereto as Exhibit 3 are true and correct copies of excerpts taken from the January 6, 2012 Deposition of Joseph Goulden in this action.

9. Attached hereto as Exhibit 4 is a true and correct copy of Deposition Exhibit 2 to the January 6, 2012 Deposition of Joseph Goulden in this action and which was authenticated by Mr. Goulden at pages 56:20-57:9 of his deposition (Exhibit 3 hereto).

10. Attached hereto as Exhibit 5 are true and correct copies of excerpts taken from the January 4, 2012 Deposition of Betty Miles in this action.

11. Attached hereto as Exhibit 6 is a true and correct copy of Deposition Exhibit 9 to the January 4, 2012 Deposition of Betty Miles in this action and which was authenticated by Ms. Miles at page 55:1-20 of her deposition (Exhibit 5 hereto).

12. Attached hereto as Exhibit 7 are publishing contracts produced by Plaintiff Jim Bouton in this action.

13. Attached hereto as Exhibit 8 are publishing contracts produced by Plaintiff Joseph Goulden in this action.

14. Attached hereto as Exhibit 9 are publishing contracts produced by Plaintiff Betty Miles in this action.

15. Attached hereto as Exhibit 10 are twenty-four publishing contracts produced in redacted form by Plaintiff The Authors Guild on January 26, 2012 and uniquely numbered AGI00001 through AGI00224. The Authors Guild, by its counsel Michael Boni, has represented to me that these contracts reflect a representative sample of the many publishing contracts in the possession of The Authors Guild.

16. Attached hereto as Exhibit 11 are true and correct screen shots of Google Books snippet view pages for:

a. Michael Crichton, *Jurassic Park* (Ballantine ed. 1997), at <http://books.google.com/books?id=O8XZAAAAMAAJ&q=dna>;

b. Henry Melville Dowsett, *Handbook of Technical Instruction for Wireless Telegraphists* (1945), at <http://books.google.com/books?id=73EEAAAAMAAJ&dq=Handbook+of+Technical+Instruction+for+Wireless+Telegraphists>; and

c. William Webster Barron, et al., *2 Federal Practice and Procedure* (1960), at http://books.google.com/books?id=DoI_AAAAIAAJ&q=federal+practice+and+procedure.

17. Attached hereto as Exhibit 12 is a true and correct screen shot of the Google Books snippet view page for Samuel M. Selby, *Standard Mathematical Tables* (1975), at <http://books.google.com/books?id=tqs6cq4s3uMC&q=1337>

18. Attached hereto as Exhibit 13 is a true and correct copy of Circular 23 published by the United States Copyright Office, *available at* <http://www.copyright.gov/circs/circ23.pdf>.

19. Attached hereto as Exhibit 14 is a true and correct copy of an excerpt from 20 *Catalog of Copyright Entries: Third Series* (Jan.-June 1966).

20. Attached hereto as Exhibit 15 are true and correct copies of copyright registration nos. A 330604, A 619840 and A 809473 produced by Plaintiff Betty Miles in this litigation.

21. Attached hereto for the convenience of the Court as Exhibit 16 is a true and correct copy of the district court decision in *WB Music Corp. v. Rykodisc, Inc.*, No. Civ.A.94-2902, 1995 WL 631690 (E.D. Pa. Oct. 26, 1995) which was downloaded from the court PACER system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 8, 2012, in San Francisco, California.

/s/ Joseph C. Gratz
Joseph C. Gratz